IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Original Jurisdiction

Dated: Nainital the 15th day of January ,2003

Criminal Misc. Bail Application Number 43 of 2003

Order on the Bail Application

CRIMINAL SIDE

Ashwani Mittal son of Sri Shanta Prasad Mittal, r/o Devpura, P.S. Kotwali, District Hardwar

……..Applicant(s)

Versus

State of Uttaranchal. …….. Opposite Party

Arising out of - Case crime no. 419 of 2002,
Under sections 147, 149, 302, 307 and 120B/34 of I.P.C.,
P.S. Jwaqlapur,
District Hardwar

By the Court

Hon'ble Irshad Hussain, J.

Heard the learned counsel for the applicant-accused and the learned Additional Government Advocate and learned counsel for the complainant.

This is second bail application. First bail application was rejected on merit. Applicant-accused is involved in a triple murder case and according to the prosecution he had hatched the conspiracy to eliminate the victims.

The fresh ground allegd is that after investigation charge-sheet had now been submitted and out of the three witnesses of the conspiracy two have not supported the prosecution version. One of the important witness of the conspiracy named as Sonal Prince has fully supported the prosecution version and at this stage, it cannot be safely accepted that his sole testimony would be of no avail to the prosecution. The witness is said to have heard the plan of crime being discussed by the applicant-accused with the assailants on 25.09.2002 in the Kutchery campus of Hardwar. Attention was drawn to the material to bring home the point of view that applicant-accused was on that day at his place of posting and was therefore, could not have been present in the Kutchery campus with the killers. The evidence of plea of alibi will need strict probe and at this state it will not be just and proper to doubt the statement of the above witness regarding the presence of the applicant-accused. Since two witnesses of the conspiracy have not supported the claim of the prosecution, the possibility of tampering with the evidence of the prosecution, if the applicant-accused is released on bail, cannot be ruled out.

The motive alleged is land transaction. It was argued that the applicant-accused had taken resort to legal proceedings on the basis of the agreement of the sale of land in favour of his wife executed by the deceased Ram Singh and therefore, it is highly doubtful that applicant-accused would have entered into a consapiracy to do the unlawful act. Mere pendency of the civil litigation cannot be taken to discard the conspiracy theory at this stage of the case as the valuable landed property was subject matter of the dispute or litigation.

The last limb of the argument is that the applicant-accused is a heart patient. The papers filed on record not indicate long history of heart ailment and it appears that

after arrest the applicant-accused had complained of some ailment and was admitted to hospital for medical advice and treatment. On this score also, the applicant-accused cannot be held entitled for bail.

In view of the above, I do not find it to be a fit case for bail. The second bail application is accordingly rejected.

(Irshad Hussain, J.)

15.01.03./B.